



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-99-194-53809

Office: Vermont Service Center

Date:

DEC 11 2000

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a missionary-pastor. The director denied the petition determining that the petitioner had failed to establish that it is a qualifying, tax-exempt religious organization. The director also found that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience or that the prospective occupation is a religious occupation.

On appeal, the petitioner argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue to be examined is whether the petitioning organization meets the requirements of 8 C.F.R. 204.5(m)(3), which in pertinent part, states that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organizations's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations...

The petitioner submitted a letter dated February 3, 1993 from the Internal Revenue Service ("IRS") which was addressed to an organization in Washington, D.C. On February 19, 2000, the director requested that the petitioner submit additional evidence. In response, the petitioner submitted a letter dated February 3, 1993 from the IRS which was addressed to an organization in Orlando, Florida. On appeal, the petitioner submits photocopies of previously-submitted documents and indicates that it moved from Orlando to San Juan in 1995. The evidence submitted by the petitioning organization does not establish that it has been granted an exemption by the IRS. There is no evidence addressed to the petitioning organization that indicates it was granted an exemption by the IRS. Accordingly, the petitioner has not met the requirements at 8 C.F.R. 204.5(m)(3).

The next issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on June 7, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working

in the prospective occupation for at least the two years from June 7, 1997 to June 7, 1999.

In a letter dated May 28, 1999, the petitioner stated that the beneficiary "has worked since 1978 as missionary-pastor and supervisor, continuously and without interruption for over twenty one years in Spain and France . . . in full time basis." The petitioner submitted several booklets containing pictures of the beneficiary in different areas of the world.

On February 19, 2000, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, the petitioner stated that the beneficiary "has pastored in Spain, since 1975, until 1983, and in France since 1983, until 1999."

On appeal, the petitioner states that the beneficiary "has worked continuously and without interruption for the [REDACTED] . . . in the last 25 years, in a full time basis." The petitioner submits more booklets and several foreign-language documents. According to the petitioner's brief translations, these foreign-language documents attest to the beneficiary's various appointments to, and abandonments of, positions abroad.

The petitioner has not submitted sufficient documentary evidence of the beneficiary's purported full-time employment throughout the two-year period prior to filing. The various booklets contain pictures of the beneficiary in different areas of the world. The presence of the beneficiary at various petitioner-sponsored events throughout the world cannot be considered evidence of the beneficiary's continuous full-time employment as a pastor. There is no contemporaneous, corroborative evidence (such as cancelled pay checks or time sheets) to document the beneficiary's work throughout the two-year period prior to filing. As such, the petitioner has not established that the beneficiary was continuously engaged in a religious occupation from June 7, 1997 to June 7, 1999. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The next issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities,

missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a letter dated May 28, 1999, the petitioner stated that the beneficiary:

will be responsible for Bible Teaching, Evangelism to the community, visiting the sick, helping people with drug through Evangelistic programs. He will assist in all the Sacred Liturgies with the adult and youth groups, Sunday School for children, take part in the mission exercises and what ever other pastoral works he may be called upon to perform.

In a separate submission, the petitioner stated that the beneficiary completed "the curriculum and graduate[d] from the Elim Theological Seminary, and receive[d] his Diploma." The petitioner submitted a photocopy of the beneficiary's diploma which was awarded to him on May 14, 1980 and a photocopy of a certificate of ordination awarded to the beneficiary on August 12, 1987.

On February 19, 2000, the director requested that the petitioner submit additional information. In response, the petitioner reiterated previously-made statements.

On appeal, the petitioner states that the beneficiary "will be assigned to take care of a work (church) for the [REDACTED] in Puerto Rico." The evidence submitted in support of this petition does not establish that the prospective occupation is a religious occupation. The petitioner stated that the beneficiary was required to complete a theological education prior to qualifying as a pastor. The petitioner submitted the beneficiary's diploma which was awarded in 1980; however, the petitioner had indicated that the beneficiary began work as a pastor as early as 1975. Further, the beneficiary did not receive his certificate of ordination until 1987. The petitioner did not provide any description of what was required of the beneficiary prior to his receipt of this ordination and, according to the petitioner, the beneficiary was working as a pastor for over a decade prior to his ordination. Thus, it appears that ordination is not a prerequisite to working as a pastor for the petitioning organization. The documents submitted, and the job description provided by the petitioner, indicate that any devout member of the petitioner's organization could perform the duties to be performed by the beneficiary. Accordingly, the petitioner has failed to meet the requirements at 8 C.F.R. 204.5(m)(2).

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.